

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 480 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ABDULKADAR NANNAMIYA SAIYAD

Appearance:

Mr.S.K.Bukhari, learned Addl.P.P.
for appellant.

MR HM PARIKH for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 11/09/2001

ORAL JUDGEMENT

1. State of Gujarat has preferred this Appeal and challenged the order of acquittal recorded by the learned Judicial Magistrate, First Class, Mahemadavad in Criminal

Case No.430/89 and the learned Magistrate has on examination of evidence of the prosecution case, including the evidence of the complainant, who was Food Inspector and considering the documentary evidence, namely sanction to prosecute the accused for the offences punishable under the Prevention of Food Adulteration Act, acquitted the accused from the offences punishable under Sections 2(1-A), (A) (M) and 7(1)(5) and 16(1)(A)(1) of Prevention of Food Adulteration Act.

Mr. Bukhari, learned Addl.P.P. appearing for the appellant State has taken me through the complaint filed by the Food Inspector Shri Y.M.Soni before the Court of the learned Judicial Magistrate, First Class and as per the said complaint, the Food Inspector had taken a sample of Khus Sarbat on 17.6.88 at about 9.45 A.M. from the accused, who was running a shop of Cold Drinks near Station Road, Jakatnaka, Mahemadavad. As per the complaint, after the said sample was obtained by following the rules as prescribed under the Prevention of Food Adulteration Act and after getting the report of the Public Analyst and after obtaining the sanction to prosecute the accused, the complaint was filed before the court on 3.3.89. To prove the case, the complainant Shri Y.M.Soni was examined before the Court at Exh.4 and in evidence in chief he has deposed before the court that he has obtained the sample of Khus Sarbat from the shop of the respondent on 17.6.88 in presence of panchas. According to him the said sample was taken by him by following the rules prescribed under the Prevention of Food Adulteration Act and Rules and the said samples were sealed and the same were sent for analysis and after getting the report, the said sample was found adulterated and thereafter forwarded the papers before the sanctioning authority, namely, Public Analyst, who in turn granted sanction to prosecute the accused. He has further deposed that he is working as Food Inspector since last 8 years. The complainant Shri Y.M. Soni was examined at length wherein he has deposed in the cross examination that the document Exh.20, namely, the sanction to prosecute, was signed by one Shri K.C.Dixit, who was working as a Senior Drug Inspector and at the relevant time he was working as Local Health Authority, namely, Assistant Commissioner, Food and Drugs Commission, Nadiad. He has further admitted that the name of Shri Dixit, who has accorded sanction to prosecute, as provided under the Act, was not published in the Gazette as Local Health Authority. He has denied the suggestion that there was no adulteration in the sample, which was obtained from the accused. However, he has admitted that the sample obtained from the accused

i.e. soluble solid percentage were not as per the standard and it was not injurious to the health.

I have gone through the order of sanction Exh.20 and the complaint filed by the complainant. Learned Magistrate has, on considering the evidence, held that Mr. K.C.Dixit was not the Gazetted Officer and in this connection he has relied upon the decision of this Court in Criminal Appeal No.299/76 in the matter of Keshaji Dajiji, wherein the Court has held that the sanction to prosecute granted should not be by an Incharge Officer and the person, who has granted sanction, must be a Gazetted Officer. I have also gone through the provisions of Section 2(vi) of the Prevention of Food Adulteration Act which reads as under:-

"(vi) "Food (Health)Authority" means the Director of Medical and Health Services or the Chief Officer in-charge of Health administration in a State, by whatever designation he is known, and includes any officer empowered by the Central Government or the State Government, by notification in the Official Gazette, to exercise the powers and perform the duties of the Food (Health) Authority under this Act with respect to such local area as may be specified in the notification"

Learned Magistrate has accordingly on this ground held that the sanction to prosecute granted was not by a proper authority, whose name was not gazetted. The Prosecution has neither led any evidence before the Court by examining Shri Dixit nor produced the Official Gazette showing that the charge was given to Mr. Dixit. Moreover, the sample, which was found, was not representative sample and there was a breach of Rule 4 as held by the learned Magistrate. In view of the same, this is not a matter where this Court is required to interfere with such findings given by the learned Magistrate based on evidence. Accordingly this Appeal is dismissed.

(D.K.Trivedi,J)